UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

FRANCISCO GARCIA individually, on behalf of his minor child SILVARIO GARCIA and all others similarly situated	)
Plaintiff(s),	) Civil Action No. 1:07-CV-2363 TCB
vs.	)
MICROSOFT CORPORATION	)
Defendant.	)

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Microsoft Corporation ("Microsoft") hereby moves this Court to dismiss Plaintiff's Complaint, and all of the claims contained therein, with prejudice.[1] The Complaint should be dismissed because each and every claim alleged therein fails to state a claim against Microsoft upon which relief may be granted. The deficiencies in Plaintiff's claims, which require dismissal of Plaintiff's Complaint, are set forth in detail in Microsoft's Memorandum of Law in Support of Defendant's Motion to

[1] Microsoft files this Motion subject to and without waiving its rights asserted in its Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a).

Dismiss Plaintiff's Complaint, filed concurrently herewith, which Microsoft relies upon in support of this Motion to Dismiss.

Respectfully submitted, this 15th day of October, 2007.

/s/ Kristy Brown
JOHN E. STEPHENSON, JR.
Georgia Bar No. 679825
KRISTINE MCALISTER BROWN
Georgia Bar No. 480189
DERIN BRONSON DICKERSON
Georgia Bar No. 220620

ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
Telephone: (404) 881-7000
Facsimile: (404) 881-7777

Counsel for Defendant Microsoft Corporation

OF COUNSEL:
CHARLES B. CASPER (admitted *pro hac vice*)
PETER BRESLAUER (admitted *pro hac vice*)

MONTGOMERY, MCCRACKEN, WALKER, & RHOADS, LLP
123 South Broad Street
Philadelphia, Pennsylvania 19109
Telephone: (215) 772-1500
Facsimile: (215) 772-7620

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2007, I electronically filed the foregoing **DEFENDANT'S MOTION TO DISMESS PLAINTIFF'S COMPLAINT** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Christopher C. Taylor
Jerome Lee
Hernan Taylor & Lee, LLC
990 Holcomb Bridge Road, Suite 3
Roswell, Georgia 30076

This 15th day of October, 2007

/s/ Kristy Brown
Kristine McAlister Brown